

June 27. 1754.

APPENDIX

FOR

Charles Schaw of Sauchie, Lord Cathcart,

AGAINST

John Stewart Nicolson Schaw, *Heir of*
Entail of the Estate of Greenock.

AS the chief Argument upon which the Pursuer's Claim of Relief of the bygone Annualrents is founded, is the Supposition of an implied Obligation upon the Heirs of Tailzie, to pay the Annualrents of Debts affecting the tailzied Estate: In order to show that no such implied Obligation has been hitherto understood, the Defender has subjoined a Condescendence of various Instances, from the Records of Tailzies; from which it appears, that where it is intended to secure the Estate from being carried off by growing Annualrents or annual Burdens, that it is usual to add proper Clauses for that Purpose.

IN

Class I. INSTANCES of Tailzies which contain Clauses obliging the several Heirs to pay the Principal or Annualrents of Debts affecting the Estate, or obliging the Heirs to apply a certain Sum of Money yearly, for Payment of Debts or Childrens Provisions.

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Vol. I.
Fol. 65.

1 Tailzie by *Cromwell Lockhart* of *Lee*, dated 2d February 1693, provides, ' That the said *Richard Lockhart* and the Substitutes shall be astricted and obliged to pay to my Creditors, the current Annualrent yearly, of all Debts real and personal, whereunto I am and shall be liable the Time of my Decease, in so far as the same are resting the Time of their Successions *respective*, and that within a Year after the Term's Annualrent falls due to the Creditors, and to take Discharges thereof, so as the said current Annualrents may not affect the succeeding Substitute, or the said Lands, Baronies, Teinds, and others above-written: And in case they fail so to do, that they shall forfeit, amit and lose all Right, Benefit and Advantage by thir Presents.'

Vol. I.
Fol. 81.

2 By Tailzie by *William* and *Anne* Duke and Dutches of *Hamilton*, dated 3d October 1693, it is declared, ' That it shall only be lawful and leifom to the said *James* Earl of *Arran*, and the other Heirs of Tailzie and Provision above written, to dispone or grant Security for raising Payment of the principal Sum, but noways for Payment of the Annualrents of the said Sums, which the said *James* Earl of *Arran* and the other Heirs of Tailzie and Provision above mentioned, shall be holden and obliged to pay out of the yearly Rents of the said Lands *respective* allowed to be burdened as said is.

Vol. II.
Fol. 80.

3 Tailzie by *Patrick Lesly* of *Balquhan*, dated 8th November 1692, provides that the Heirs of Tailzie shall not suffer the Lands to be appraised or adjudged for any of the Tailzier's Debts, or Childrens Provisions; ' but they shall be

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shall be holden and obliged to pay these Debts and Portions out of the Rents and Profits of the said Lands.

Vol. II.
Fol. 188.

4 Tailzie by *Alexander Earl of Murray*, to *Charles Lord Down* in Liferent, and the Heirs-male of his Body in Fee, is granted with the Burden of all the Earl's Debts, contracted or to be contracted; and it is provided, that Lord *Down* shall be holden and strictly obliged to pay all the Annualrents thereof, and his Heirs-male and of Tailzie, all the principal Sums, and to fulfill all his other Deeds.

5 Tailzie Sir *Humphry Colquhoun* of *Luss* provides, That Vol. III.
Fol. 402.
VI. 167
the Heirs of Tailzie shall be astricted and obliged to pay to the Creditors the current Annualrents of all Debts real and personal, whereunto I the said Sir *Humphry Colquhoun* am liable at the Date hereof, in so far as the same are resting at the Time of their Succession *respective*, and that within two Years after the Terms Annualrent falls due, and to take Discharges thereof, so as the current Annualrents may not affect the succeeding substitute Heir, but be paid by the Fruits and Rents of the Estate. The Tailzie is dated 27th December 1706.

6 Tailzie Colonel *Thomas Hamilton* of *Fallaball* provides, Vol. IV.
Fol. 143.
p 26.
That the Heirs of Tailzie who shall happen to succeed to the Lands and Estate above specified, shall be bound and obliged to pay the Debts contracted or to be contracted by me, with all the Care and Diligence imaginable, and not ways suffer the same to increase by Neglect of Payment of the Annualrent that shall happen to be resting; wherein if they fail, the Person failing shall be subject and liable to the same Irritancy as above. Dated 10th June 1709.

7 Tailzie, Sir *William Bruce* of *Kinross*, dated 8th March 1708. The Heirs of Tailzie have Power to burden the Estate with a Sum not exceeding 20,000 Merks; the Estate is burdened with Sir *William Bruce's* Debts: And it is provided, that the Heirs of Tailzie shall be obliged To employ, ware, and bestow the free Rents of my said Lands, Barony, and
here
others,

Vol. IV.
Fol. 190.

others, above-mentioned, (after the Payment of my Wife's Jointure in the first Place) and that in Payment, and for extinguishing of the Debts and Sums of Money that shall happen to be justly resting by me any Manner of Way the Time of my Decease; and also for Payment of the said Debts and Sums wherewith they have Power to burden the said Lands, in Manner above expressed, and not to take Assignations, Dispositions, or other Rights thereto, to affect and burden the said Lands, whereby the said Tailzie intended for the Preservation thereof, may be anyways rendered void, null, or ineffectual.

Vol. IV. Tailzie, *Janet and Agnes Maxwells of Breddielands*, dated 18th May 1710, provides, That the Heirs of Tailzie shall be bound to pay yearly the Annuities therein mentioned, out of the first and readiest Mails and Duties of the tailzied Lands; and that they shall by the yearly and punctual Payment of the Annuities as they become due, disburden the tailzied Lands of the same, and shall not suffer three Years Annuity to run into the fourth unpaid.

Vol. IV. Tailzie, *Andrew Fisher of Housebyre*, dated 20th December 1709, gives Liberty to *John Fisher* to provide one Daughter in 2000 Merks, two Daughters in 3500 Merks, &c. and which Provisions the succeeding Heirs of Tailzie shall be bound to pay out of the Mails and Duties of the Lands disposed, by setting apart the Third thereof, immediately after the Decease of their Mother, or other Liferenter. It is further destinate, 'That the Persons above-named, whether Liferenters or Heirs, shall, after the said *Andrew Fisher*, elder, my Decease, make punctual Payment of all the bygone Annualrents due at the Term preceeding my Decease, and yearly and termly during the Non-payment of the Principals. And in case the Liferenter, or Heir possessing, shall suffer two Years Annualrent of all, or any Part of the said Sums to run unpaid: It is recommended to the next Heir of Tailzie, or any one of them; and they are hereby empowered

ered and required to meet and concur together towards getting the Rents of the Estate sequestrate, and to get the same applied towards Payment of the bygone Annualrents, and in Time coming, and to get the improvident Liferenter or Heir of Tailzie contraveining, put out of the Management of the Estate, and the same established in another more fit Person as they shall agree.

10 Tailzie, Sir Robert Greirson of Lag, dated 26th October 1713, provides, That it shall not be lawful to the Heirs of Tailzie to suffer the Annualrents of the Sums of Money and Debts due by the Tailzier, or of any of them, or of any Part thereof, to ly over unpaid; so that the Annualrents may be augmented and become more than they now are; but that the said William Greirson and the said other Members, and Heirs of Tailzie, shall once within the Year purge and pay them, so as there shall not be more resting than now is; and that they shall not suffer any Adjudications that shall happen to be led for any of the said Debts to continue unpaid. Vol. V. Fol. 1.

11 Tailzie, Henry Lord St. Clair, burdens the Estate with Payment of all his just Debts; and provides, That the Heirs of Tailzie shall be obliged to purge and clear the Estate not only of the current Blench-feu and Teind-duties, Ministers Stipends, School-masters Fees, and other publick Burdens; as also the current Annualrents of the preferable and privileged Debts, and that yearly during all the Days and Space of the said Heir's Possession, and continuing in the Right of the said Estate, and uplifting the Rents thereof; so as at no Time during their said Right and Possession, there be two full Years of the said Annualrents or publick Burdens resting; but also to purge and clear the said Estate of the Sum of 7000 Merks yearly, and ilk Year, during his or her continuing in the said Right and Possession before out-running of the next Year thereafter; and that in part Payment of the principal Sum of the said preferable and privileged Debts resting upon the said Estate B state p264

state the Time of the said Heir's Entry thereto; and to duly procure and registrate ilk Year, or before expiring of the next Year thereafter, Discharges and Renunciations of the same, with Power to the Heirs of Tailzie (for redeeming Adjudications) to borrow Money and grant heritable redeemable Security on the Estate, for so much thereof as be is applied for purging of the said privileged Debts to be adjudged for as is above specified; but prejudice always to the said Heirs of Tailzie being liable to pay yearly the aforesaid publick Burdens, current Annualrents, and the said privileged Debts, and a Part of the principal Sums thereof, in Manner above expressed.

12 Vol. V. Tailzie, *David Earl of Airly*, provides, That the Heirs
Fol. 163. always during their Possession make Payment of the bygone and current Annualrents of any Debts that may be resting by the Earl at the Time of his Decease.

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13 Vol. V. Tailzie, *Dame Helenor Nicolson*, Relict of *Sir John Schaw*,
Fol. 359. gives Power to provide younger Children in competent Portions not exceeding 10,000 Merks, and which Portions shall be paid by the succeeding Heirs of Tailzie, as follows, viz. The current Annualrent thereof, with 1000 l. of the principal Sum yearly, and ilk Year after their Entry; and that before they shall have Power to burden the Estate with the like Portions to their younger Children, dated 6th September 1711.

14 Vol. VI. Tailzie, *Alexander Guthrie* Writer to the Signet, with
Fol. 171. Consent of *James Dalziel* of *Binns*, gives Power to contract on the Estate 10000 Merks for Provisions to younger Children; and the Heirs of Tailzie are bound to pay yearly all publick Burdens and current Annualrents of the privileged Debts, (if any be) resting for the Time, with such a Share of the principal Sums thereof as they shall think fit, the same not being under a fifth Part of the free Rent of the said Estate falling due to them, and to report Discharges of the same, dated 19th August 1723.

By

15 By Deed dated 21st September 1724, execute by Sir Hew Dalrymple of Northberwick, he explains the true Meaning and Intention of his Tailzie, to imply that his Son and his Heirs of Tailzie should be bound and obliged to pay the current Annualrents of all the Debts which may anyways affect the tailzied Estate, at least once within the Space of two Years after the same falls due; and that in case of Not-payment within that Time, or one Month thereafter at furthest, the Irritancy of the foresaid Tailzie shall be understood to be incurred. 266

16 Tailzie, Sir Richard Newtown of Newton gives Power to provide the younger Children to three Years free Rent of the Estate, and are only allowed to be granted with a special Quality, that the same shall never be increased to burden the said tailzied Estate by growing Annualrents, nor so as any Diligence may follow upon the same against the tailzied Estate, further than for securing the said three Years free Rent, and that the Annualrents and Expences may affect the Persons of the Heirs of Tailzie, or current Rents of the tailzied Estate, or their separate Estates, but may noways really affect the said tailzied Estate, and the saids Heirs of Tailzie shall be bound and obliged to satisfy and pay the Annualrents of the saids Provisions, and thereby effectually to disburden the said tailzied Estate thereof, and not suffer any Diligence to pass against the same for Annualrents or Penalties; wherein if they fail, the Right of the Contraveeners shall be *ipso facto* found void and null, &c. This Tailzie is dated 18th June 1724. Vol. VI. Fol. 381.

17 Tailzie, George Gordon of Wardhouse provides, that it shall not be lawful for the Heirs of Tailzie to contract Debts exceeding 1000 Merks, either for Provision of their younger Children, or any other Manner of Way whatsoever. For the Payment of the which Sum so provided to the younger Children of any of the Heirs of Tailzie above specified, the next Heir of Tailzie who shall succeed, and stands bound in the Payment thereof, shall be bound and obliged by the Acceptation p 267

tion hereof, to allocate and set apart 300 Merks yearly out of the Rents of the Lands, and others above written, for paying and satisfying of the aforesaid Sum of 1000 Merks provided to the younger Children, as said is, ay and while the same be compleatly paid, so that the same may not be a Burden upon the next succeeding Heir of Tailzie.

18 Vol. VII. Tailzie, Major *Gavin Hamilton* of *Raploch* gives Power
Fol. 127. to provide younger Children in three Years Rent of the Estate, but so qualified, that the same shall never increase to burden the said tailzied Lands and Estate by growing Annualrents, nor so as any Diligence may follow upon the same against the said tailzied Estate, further than for securing the principal Sums; and that the Annualrents and Expences may affect the Persons of the said Heirs of Tailzie, or current Rents of the tailzied Estate, or their separate Estates, but may noways really affect the tailzied Estate; and the said Heirs of Tailzie shall be bound and obliged to satisfy and pay the Annualrents of the said Provisions, and thereby effectually to disburden the said tailzied Estate thereof, and not suffer any Diligence to pass against the same for Annualrents and Penalties, wherein if they fail, the Right of the Contraveener, &c.

19 Vol. VII. Tailzie, *Alexander* Earl of *Eglington* gives Power to
Fol. 321. provide younger Children in the same Terms that *Hamilton*
p. 268 of *Raploch's* does.

20 Vol. VII. Tailzie, *James Leslie* of *Tullich*, dated 24th July 1730,
Fol. 366. gives Power to provide the younger Children in 4000 Merks, payable at their respective Marriages or Majority, which of them first shall happen, with Annualrent from and after the Expiration of their respective Pupillarities; but that the Estate, or Heirs of Entrail then to succeed, shall noways be affectable for Payment of any more Annualrent of the said Sum allowed to be provided to the younger Children, except what shall fall due betwixt their respective Pupillarities and the said Terms of Payment thereof. Power is likeways given to burden the Estate with 2000 Merks, and five Years Annualrent thereof only.

ly, and whatever more Annualrent shall happen to fall due thereon, shall never affect the said Lands, or any Part of them.

Tailzie, *Mrs. Barbara Nairn of Seggiedean*, Power is granted to provide younger Children in competent Provisions out of the Rents, Mails, and Duties of the Estate, the same not exceeding ten thousand Merks. — Power is granted to contract Debt on the Estate to the Extent of the Debt that should be owing by her at her Death for paying the same off, and the Heir succeeding being always liable for, and holden to pay the Annualrents thereof from Time to Time out of the Mails and Duties, and shall by no Means suffer the Annualrents to ly over, or run on unpaid, but shall punctually answer and pay the same out of the first and readiest of the Mails and Duties of the said Estate during their respective Rights. Dated 22d May 1730.

Vol. 8.
Fol. 434.

21

Tailzie, *William Marquis of Lothian*, dated 21st December 1738, gives Power to burden the Estate with three Years free Rent for Portions to Children, which shall never increase to burden the Estate by growing Annualrents, nor so as any Diligence may follow upon the same against the tailzied Estate further than for securing the said three Years free Rent, and that the Annualrents and Expences may affect the Persons of the Heirs of the Tailzie, or current yearly Rents of the tailzied Estate, but may no Ways affect the tailzied Estate, and the Heirs of Tailzie to be bound to pay the Annualrents of the said Provisions, and thereby effectually disburden the Estate thereof, and not suffer any Diligence to pass against the same for Annualrents and Penalties.

Vol. 9.
fol. 248.

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Tailzie, *Sir Thomas Kirkpatrick of Closeburn*, Baronet, dated 11th August 1740, gives Power to provide Children in Portions, and to cut the natural Woods upon the Estate, but not Planting, at the Sight of two of the Friends on the Father's and the Mother's Side, the Price of the Woods to be applied for inclosing the same in the first Place, and the Remainder for Payment of the Childrens Portions, and what remains of them, only

Vol. 9.
fol. 394.

23

only to be a Burden on the Estate, and the Heir to be bound to pay the Annualrent of the Portions.

24 Vol. 10.
fol. 92.

Tailzie, Sir *Alexander Murray* of *Blackbarony*, dated 16th April 1741, ' the Heirs of Tailzie are obliged to relieve the Heirs of Line of the former Branch, excluded from such Parts of my Debts and Deeds as shall remain unpaid and unperformed at the Time of his Succession in so far as may extend to the principal Sums allenary, the Heirs and Successors of the former Branch being always liable to satisfy and clear off the bygone Annualrents due during their own Possession.

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25 Vol. X.
Fol. 122.

Tailzie, *Colin Campbell* of *Blythwood*, provides, that the Heirs of Tailzie be obliged to pay all his Debts, and to apply 6000 Merks yearly of the Rents towards such Payment, so far as his other Funds, (therein disposed) viz. the Sums of Money owing to him, and moveable and personal Estate belonging to him, shall not be sufficient to satisfy the Debts and Obligements due and prestable by him, and to continue the yearly Application of the foresaid Share of the said Rents, until his Debts and Obligements be fully cleared and extinguished, and upon Payment and Performance to take Discharges thereof, and not Assignations thereto.---Power to provide the younger Children in Portions bearing Interest only after the Granter's Death, and bearing the yearly Rents and Profits of the said Estate to be liable to Diligence for Payment of such Portions, Annualrents and Penalties.

26 Vol. 11.
Fol. 17.

Tailzie, *James Oliphant* of *Gask*, Power to provide younger Children in Portions not exceeding 10,000 £. which shall not burden or affect the Estate or Heir of Tailzie for a longer Time than the Space of 7 Years after the Death of the Granter of the Provisions.---The Estate is burdened with the Granter's Debts, and the Heir of Tailzie bound to pay the Annualrents thereof punctually, under an Irritancy, if he allows two Years Annualrent to run into the third unpaid, dated 24th August 1719.

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27 Vol. I.
Fol. 18.

By Tailzie of Sir *William Scot* younger of *Harden*, the Heirs
of

of Tailzie are taken bound to pay the Feu and other Duties due to the Superior; and in Case of the Succession going to an Heir Male not descended of his Grandfather, then there is 20,000 *l. Scots* to be paid to the Heirs whatsoever descended of his Grandfather: And that the same may not ly long as a Burden upon the Estate, it is provided, that the Heir succeeding to the Estate shall pay yearly 3000 Merks until the Debt be compleatly paid. This Tailzie is dated 7th May 1686.

Tailzie by Sir *John Forbes of Craigievar*, dated 22d January 1696, declares it shall not be lawful to contract Debts exceeding 20,000 *l. Scots* for Provision of the younger Children, or any other Manner of Way. — For Payment of which Sum so provided to the Children of any of the Heirs of Tailzie above specified, the next Heir of Tailzie who shall succeed and stand bound in the Payment thereof, shall be bound and obliged by the Acceptation hereof, to allocate and set apart 3000 Merks yearly out of the Rents of the foresaid Lands and others abovewritten, for paying and satisfying the foresaid 20,000 *l.* provided to the saids younger Children as said is, ay and while the same be compleatly paid, so that the same may not be a Burden upon the next succeeding Heir of Tailzie.

Tailzie by *John Farquharson of Invercauld*, dated 21st February 1696: The same Clause *verbatim* as in *Craigievar's*, anent contracting 20,000 *l.* for younger Childrens Provisions.

Tailzie, *Alexander Livingston of Badlormie* is burdened with the Payment of his Debts, and failing Heirs Male of his Body, with Portions to his Daughters, of which Portions 3000 Merks are appointed to be paid yearly to them, till the same be wholly paid, dated 17th December 1702.

Tailzie, *William Sandilands of Couston* provides, that he shall have Power for satisfying and paying the Debts therein mentioned, to secure the Sum of 3500 Merks on the

Vol. I. 28
Fol. 215.

Vol. I. 29
Fol. 228.
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Vol. III. 30
Fol. 36.

Vol. III. 31
Fol. 141.

the Lands of *Conston*, and in case he be obliged to repay the said Sum, then he shall have Power to borrow the like Sum from any Person, and renew the heritable Security on the said Lands for the same; as also the Heirs of Tailzie have Powers to contract 2000 Merks upon the Estate for portioning their younger Children, providing always that the Heirs of Tailzie foresaid, shall so soon as they enter to the Possession of the Estate, be obliged to satisfy and pay attour the current Annualrents, each Year of the foresaid privileged Debts to be contracted on the Estate at the Time, the Sums and in the Events following: *viz.* If the Estate be then not burdened with a Liferenter, the Sum of 200 Merks yearly; and if it be so burdened, then with the Sum of 100 Merks yearly; and so much of the said privileged Debts as bees thus paid, shall be fully extinguished by the said Heirs of Tailzie, and they obliged to take Discharges thereof, and not Conveyances of the same: Neither shall any of the foresaid Heirs of Tailzie, have Power to contract any Part of the said 2000 Merks, which they are hereby privileged to contract for portioning their younger Children, not having otherways the same to give them, until such Time as all the privileged Debts that shall at that Time be resting on the Estate, be fully paid. This Tailzie is dated the Penult of *February* 1704.

32 Vol. III. Tailzie, *John* Earl of *Breadalbane* and *Holland*, &c.
 Fol. 252 Power to sell Lands, wadset, &c. for Payment of the Earl's Debts.— Power is granted to the Heirs of Tailzie to burden the Estate with Portions to one, two, or more younger Children; the Sons Portions payable at their Age of 21, and the Daughters at their Marriage, and the Heirs of Tailzie are bound to maintain and educate the younger Children, until the Daughters be 15 Years of Age, and the Sons be 17; after which respective Ages of 15 and 17, their Portions shall bear Annualrent: And it is provided, that the Heirs of Tailzie shall apply the Half of the Tochers they may get by their Wives, towards Payment of the foresaid Provisions allotted for the younger Children. This Tailzie bears Date, 13th *December* 1704.

INSTANCES

INSTANCES of Tailzies, by which the Provisions of Chil Class II.
*dren are only declared to affect the Rents, but not the
 Fee of the Estate; in many of which it is declared, that
 only Part of the Rents are to be affected for such Pro-
 visions, or that the Rents shall only be so affected for a
 certain Number of Years.*

By Tailzie, *James Dundas of Arniston*, with Consent of Vol. III. p 274
 Lord *Arniston* his Father, Power is granted to the said *James* Fol. 338. 33
Dundas, and the Heirs of Tailzie, to provide to the younger
 Children, Male or Female of each Heir of Tailzie, the Sum
 of 36,000 Merks out of the Lands and Barony above written,
 to be divided among them, as their Father shall think fit; and
 for the Security of the Annualrents of the said Childrens Por-
 tions, it shall be in the Power of us, and the said Heirs of
 Tailzie, to give to the saids younger Children, Assignations
 to Mails and Duties, and to grant Infeftments for Security of
 the said principal Sums, out of Parts and Portions of the
 Lands, Barony, Teinds, and others above written, but no
 personal Obligement for Payment of the same, and the saids
 Infeftments to be always under Reversion for Payment of the
 principal Sums, for Security whereof the same are granted, at
 the Instance of the Heir of Tailzie for the time: And for
 their further Security of the Annualrents of the said principal
 Sums, by the Assignation to Rents, as said is, it is hereby de-
 clared, that the saids Assignations are to stand in Force, and
 continue in Security of the said Annualrents, notwithstanding
 of the Death of the Granter, ay and while they be compleatly
 paid thereof. Dated 22 March and 22d May. 1705.

Tailzie, *John Crawford of Milton*.— Power to provide Vol. VII. 34
 younger Children in three Years Rent, and to burden and Fol. 386.
 affect the free Rent and Profit of the said Lands and Estate,
 until the saids Portions and Annualrents thereof be satisfied and
 paid; but shall be no Ground for affecting and burdening the

Persons of the Heirs of Tailzie personally, or the said Lands and Estate really, by Apprising, Adjudication, or any other Manner of Way, other than for burdening the free Rent of the said Lands therewith, as said is. Dated 15th May 1706.

35 Vol. X. Tailzie, *William Earl of Aberdeen* gives Power to grant
Fol. 405. Provisions to Children, bearing Interest only at the Granter's Death, declaring the Persons of the Heirs-male general and of Tailzie, and any Estate real or personal belonging to them, other than and except the tailzied Estate, and likewise the yearly Rents and Profits of the tailzied Estate, shall always be subject and liable to any Diligence and Execution competent by Law, for Payment and Security of such Provisions to Children, as are allowed to be hereby granted, and Interest thereof, and Penalties correspondent thereto. — But no Adjudication or other Diligence against the Fee and Property of the Lands and Estate to be competent.

36 Vol. XI. Tailzie *James Dewar of Vogrie*, In case of his Daughters
Fol. 120. succeeding, certain Sums are appointed to be paid to his other Daughters yearly, by certain Proportions, which are noways to affect or become a real Burden or Charge on the Property of the Estate, but only shall affect the Rents and Produce thereof, that shall grow due for the Crops and Years in which the forementioned Sums are appointed to be paid, and those who intromit with the same, and the Person of such of his Daughters as shall have succeeded to the Estate, or the Descendents of their Body, &c. Dated 24th July 1747.

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3 37 Vol. XI. Tailzie *James Napier of Ballahinrain*; the Heirs of
Fol. 219. Tailzie are bound to grant Bonds of Provision to their younger Children, for Portions, payable upon their attaining the Years of Majority or Marriage, with Annualrent thereafter till Payment. The Rents of the Estate, and Profits of the Woods to be subjected to the Payment of them; but the Property of the Estate no ways to be subject to be evicted therefor. Dated 22d November 1748.

Tailzie

Tailzie by *Alexander Earl of Murray*; ' Moreover, to Vol. II. Fol. 188. *38 A*
 ' the End the younger Children of the Heir of Tailzie suc-
 ' ceeding, may be the better provided, without contracting
 ' of Debts upon the said Estate, it shall be lawful and leifom
 ' to the said Heir of Tailzie to provide in their Favours
 ' by Bonds of Provision, which shall affect the said Estate,
 ' what Sums he shall think fit, and to proportionate the
 ' same, not exceeding three free Years Rent of the said Estate,
 ' after Payment of all Publicks and Annualrents; and for
 ' Payment of which Sums to be contained in the said Bonds of
 ' Provision, and what may be due thereof, after the Granter's
 ' Decease, the Rents of the said Estate, both real and casual,
 ' for the like Space of three Years, immediately after the
 ' Granter's Decease, shall be, and are hereby assigned, desti-
 ' nate and appropriate for Payment of the said Sums to be con-
 ' tained in the said Bonds of Provision; and the next Heir
 ' of Tailzie hereby excluded from the Possession, or uplifting
 ' of the said Rents during that Space, he having always pun-
 ' ctually paid him, at two Terms in the Year, during the
 ' said Space of three Years, the Sum of 10000 Merks, inclu-
 ' ding his former Estate, (if he have any) for his honourable
 ' Subsistence yearly; and after the Expiration of the said three
 ' Years, the next Heir of Tailzie is hereby declared to have
 ' full Liberty to enter to the Possession of the said Estate, and
 ' to the full Enjoyment thereof; and if the said Heir of Tail-
 ' zie succeeding, shall happen to do any Deed in prejudice of
 ' this last Clause, by interrupting the Children's Possession,
 ' during the said three Years, and uplifting the Rents during
 ' that Space, to which they are hereby assigned, for the be-
 ' ter Payment of their Provisions, then he for him, and the De-
 ' scendents of his or her Body, shall amit and tyne his Right
 ' to the said Estate, and the same shall devolve on the next
 ' Heir of Tailzie, who is and shall be subject to the like Irru-
 ' tancies.

Tailzie

38 Vol. II. Tailzie by *James Sandilands* of *Crabstoun*, is granted
Fol. 201. with the Burden of his Debts and Childrens Provisions, and
the Heirs of Tailzie are debarred from uplifting the Rents,
(further than their own Subsistence, to wit, 500 Merks
yearly, ay and while his Childrens Provisions be satisfied and
paid. Dated 14th *June* 1700.

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39 Vol. VI. Tailzie *John Claybills* of *Innergowrie*; Power to pro-
Fol. 77. vide their Children in reasonable Portions and Provisions, which
are not to be a Ground whereupon the Lands and Estate may
be adjudged or otherwise evicted, but shall only affect the
Rents belonging to the Heirs of Tailzie, not exceeding the
Number of ten Years Rent, after the Granter's Death.

40 Vol. VIII. Tailzie *Charles Ross* of *Balnagown*, provides, that it
Fol. 203. shall not be lawful to the Heirs of Tailzie, to grant Bonds of
Provision to their Children, for any Sum of Money, or Por-
tion of Rent, so as to burden or affect the Estate: But Power
is granted to allocate and appropriate as much of the Rents
of the Estate for eight Years, as will raise the Sums therein
mentioned, for Provisions to younger Children; and the Rents
are to be uplifted by the younger Children themselves. Dated
5th *August* 1727.

26 Vol. XI. Tailzie *James Oliphant* of *Gask*; — Power to provide
Fol. 17. younger Children in Portions not exceeding 10000 *l.* which
shall not burden nor affect the Estate, or Heir of Tailzie for
a longer Time than the Space of seven Years after the Death
of the Granter of the Provisions. — The Estate is burdened
with the Granter's Debts, and the Heir of Tailzie bound to
pay the Annualrents thereof punctually, under an Irritancy,
if he allows two Years Annualrent to run into the third unpaid.
Dated 24th *August* 1719.

p 279
41 Vol. XI. Tailzie, *John Karr* of *Kippilaw* — Power to provide
Fol. 62. younger Children in Portions not exceeding 200 *l.* to be paid
and levied out of the Estate in the Space of ten Years from and
after the Heir's Decease, at the Rate of 20 *l.* yearly, and im-
powers the Children to uplift the same from any of the Te-
nants

nants; and if they allow two Terms to run in the third unpaid, then they lose what is bygone, over and above the two Terms. *Moiety*, dated 3d *February* 1746.

Tailzie, General *George Preston* of *Valleyfield*, Power to Vol. XI. 42
provide younger Children in 30000 Merks of Portions, which Fol. 244.
are noways to afford any Ground or Title for Adjudication, or
other Diligence to affect or burden the Estate, but only to af-
fect the Rents, Mails and Duties thereof, for the Space of
twenty Years after the Death of the Granter of the Provisions,
and no longer, dated 30th *December* 1736.

Tailzie, Mr. *Adam Fergusson* Minister at *Logiereat*, the Vol. XII. 43
Childrens Portions to be recovered out of the Rents of the E. Fol. 108.
state, within the Space of ten Years of the Granter's Death,
dated 23d, *March* 1753.

Tailzie, *Archibald Crawford* of *Cartsburn*,—Power to Vol. X. 44
provide younger Children in Portions not exceeding three Fol. 312.
Years free Rent, and no more than the one half of the Rents,
Issues and Profits of the Estate, so far as unaffected at the
Time, be subjected and liable to any legal Execution for Pay-
ment of the laid Provisions. p 280

Tailzie, Sir *John Crawford* of *Kilburnie*,—Power to Vol. XI. 45
provide Children in competent Provisions to burden and affect Fol. 71.
the one half of the free Profits of the Estate, until the Sums
and Annualrents thereof be paid and satisfied, dated the last
of *July* 1662.

Tailzie, Sir *Robert Pollock* of that Ilk allows the Rents of Vol. XI. 46
the half of the Estate to be subject to Diligence for the Chil- Fol. 418.
drens Portions:

Tailzie, *Henry Wellwood* of *Garvock*, the Annuities to Vol. XII. 47
Wives only to affect the Rents of the Estate, and that for Fol. 1.
three Years only after the Annuity is due, the Provisions to
Robert Wellwood's younger Children only to affect the Rents
of the half of the Estate, dated 29th *May* 1751.

Tailzie, Mrs. *Elizabeth Rothead* of *Innerleith*,—Pow- Vol. XII. 48
er to grant Portions to Children, bearing Interest only after Fol. 177.

the Granter's Death, and to affect three fourth Parts only of the yearly free Rent, dated 14th January 1749.

49

Vol. XII. Tailzie, John Dundas of Manner, Power to provide
Fol. 198. Wives in an Annuity which is only to affect the Rents, and
even these for no longer Space than three Years after the An-
nuity is due, — Power to provide Portions to Children, bear-
ing Interest only after the Granter's Death, and only to affect
the half of the free Rents of the Estate; this Tailzie is dated
1st February 1754.

p281

INSTANCES

INSTANCES of Tailzies by which Part of the Rents Class III.
are appropriated or sequestrated for Childrens Provisi-
ons.

Tailzie by *Roderick Mackenzie of Prestonhall*, provides, Vol. III.
 That in respect there is no Power given to the Heirs of Tail- Fol. 348. 60
 zie to burden the tailzied Estate with any Sums of Money,
 for providing their younger Children, lest the same might
 create Grounds of Debt, whereupon Diligence might follow,
 and the tailzied Estate thereby affected and evicted, to the Pre-
 judice of the Heirs of Tailzie, and the overturning of the
 present Settlement; to prevent which, and that the younger
 Children may not be left altogether unprovided; therefore, in
 case the younger Children of the Heirs of Tailzie, or any
 of them, be not provided in Portions before their Father's
 Death, in the Sum of 10,000 Merks *Scots*, at least, to each
 of them: That then the Rents of the Lands of *Stratharick*
 and *Abertarff* shall be sequestrated and put in the Hands of
 a Factor to be named by the Duke of *Athole*, Earl of *Cra-*
marty and *Mackenzie of Scarwell*, or any two of them,
 and their Heirs, to be applied for making up Portions to the
 unprovided Children from Time to Time during the Continu-
 ance of the Tailzie; that is to say, ay and while the Rents
 and Duties of the Lands shall compleatly make up and pay to
 ilk one of the younger Children 10,000 Merks *Scots*: And it
 is provided, that the Heir of Tailzie for the Time is not to
 enter to the Possession of the Lands, or meddle with the
 Rents; but the same are to be uplifted by the said Factor,
 and at accompting therefor, he is to be allowed a Salary not
 exceeding 200 Merks yearly. This Tailzie is dated 9th *Fe-*
bruary 1706. p 282

Tailzie, Sir *Patrick Murray of Auchtertyre*, Gives Vol. V.
 Power to provide younger Children in Portions not exceed- Fol. 383. 51
 ing ing

ing 30,000 Merks, with an exprefs Clause ordaining the same to be paid to them out of the Rents of the Lands and Teinds after specified, and for paying the said Provisions made with the foresaid exprefs Clause; that immediately after the Granter's Death, the Rents, Casualties and Grassums, of the Lands of *Brea of Foulis*, &c. shall be sequestrate, with Power to the Trustees therein mentioned, to let Tacks, use Warnings, output and input Tenants, and nominate and appoint Factors, ay and until the said Provisions be paid, to whom the said Factors shall compt yearly, and on Compt and Payment making, shall have a Salary of 100*l. Scots per annum*; and which Rents, Casualties and Grassums, after Payment of all Cesses, &c. during the Sequestration, is to be applied for Payment of the Annualrents of the said Provisions in the first Place, and the Superplus thereof to be applied for Payment of the principal Sums due to the said Children, beginning at the eldest, until each of them in Order, according to the Priority of their Birth, be paid of the respective Sums due to them. In case the Father fail to grant Provisions to his younger Children, the Trustees have Power to do it out of the Rents of the said Lands. This Tailzie is dated 6th June 1722.

Vol. VIII. Tailzie, *William Murray of Touchadam* provides, That
 Fol. 182. it shall not be lawful to the Heirs of Tailzie to grant Bonds of Provision to their Children, so as to affect the Estate: But upon the Existence of a younger Child, a Factor is to be appointed upon the Barony of *Cowie*, who is to lend out 3000 Merks yearly of the same for Behoof of the younger Children, and the Residue of the Rents yearly to go to the Heir of Tailzie, after deducing the Factor's Salary; and this Appropriation to continue for four Years, if one younger Child, six if two, and ten if three or more. Localities to Husbands or Wives not to be given out of the Barony of *Cowie*, but out of the other Estate.

Tailzie,

Tailzie, Sir *James Lockhart of Carstairs* Baronet. Sir *James* provides the only Daughters of a Marriage, or the younger Children of the Heirs of Tailzie, in certain Provisions therein mentioned, and assigns to them the Rents, Mails and Duties of the whole Estate, except the Mansion-house and Mains of *Lockhartball* and Lands of *Ravenstruther*; and that from the first Term after the Decease of the respective Fathers or Mothers, till the Portions be paid, and the eldest Son or Heir is debarred from touching these Rents, till the Portions be paid, under an Irritancy; and which Provisions are declared to be by and attour whatever they shall get from their Father out of any separate Subject, or any other Subject, to which they may have Right otherwise.

Vol. IX.
Fol. 110. 53

p. 284

Tailzie, *John Forrester of Culmuir*, Power to provide Children in 3000 Merks of Portions, which are only to affect and be paid out of the Rents; and until the same be paid, the Heirs of Tailzie shall have no Power to possess or intromit therewith, or any Part thereof, except to the Extent of 100 *l.* Scots yearly. Dated 31st December 1739.

Vol. IX.
Fol. 367. 54

Tailzie, Sir *John Paterson of Eccles*. The Rents are assigned and appropriate for Payment of the Childrens Provisions, and what may be due thereof after the Granter's Death; and the next Heir of Tailzie is excluded from possessing or uplifting the Rents, until the Provisions be paid, he having always paid him yearly in the mean time such a Sum for his Aliment and Subsistence, as shall be appointed by the Granters of the Bonds of Provision, the same not exceeding 100 *l.* Sterling yearly. Dated 29th January 1743.

Vol. XI.
Fol. 100. 55

Tailzie, *John Earl of Hopetoun* to *James Hope*. Power to provide the younger Children in Portions, not exceeding 2400 *l.* Sterling, by way of Assignment or Locality only, to the Extent of 300 *l.* yearly out of the Rents of the Barony of *Ormiston*, and that for the Space of eight Years next and immediately following the Death of the Cedent, and no longer.

Vol. XII.
Fol. 122. 56

p. 285

after which the Affignation or Locality shall cease and determine; declaring, that while any Part of the said Portions, in favour of other Children beside the Heir, remains unpaid, no subsequent Provision in favour of younger Children shall take place; so that there shall never be more than 300 *l.* yearly of the Rents of the Estate affected at one time for Provisions to younger or other Children than the Heir. Dated 11th April 1752.

INSTANCES

INSTANCES of Tailzies, reserving Power to the several Heirs to feu out the Whole or Part of the Estate.

Tailzie *William Lord Salton*, dated 11th March 1706; And Vol. III. Fol. 373. 57
 • sicklike, for the Encouragement of the Trade of the Town
 • of *Frasersburgh*, and of the Merchants or Freemen therein, or
 • Inhabitants thereof, to build more Houses for enlarging that
 • Burgh: Therefore, and notwithstanding of the Restrictions,
 • Limitations, and irritant Clauses above and under-written, it
 • shall always be lawful for the said *Alexander* Master of
 • *Salton*, and other Heirs of Tailzie above-mentioned, conform
 • to the Order and Destination, above specified, to feu out
 • haill Tenements, or half Tenements, in and clos about the
 • Burgh of *Frasersburgh*, in the same Manner as the de-
 • ceased *Alexander Lord Salton*, or we the said *William Lord*
 • *Lord Salton* have been, and are in use to do, with Liber-
 • ty of Moss, and all other Privileges used and wont, the
 • said haill Tenements not exceeding 28 Ells in Length, and
 • as much in Breadth, and so proportionally; and paying such
 • Feu-duties, Entries and other Services and Servitudes as they
 • were and are in Use to pay to us at and before the making
 • hereof: Which Feu-rights to be granted for building Houses,
 • as said is, are hereby declared good, valid and effectual to
 • the Feuars; providing always, likeas it is hereby expressly
 • provided and declared, since these Feus of Tenements are
 • only allowed to be granted for enlarging the Number of
 • Houses and Inhabitants of the said Town, that no such
 • Feus of Tenements or half Tenements be granted, but ei-
 • ther in or clos to the said Town. It being hereby expressly
 • provided and declared, that none of our said Heirs or Suc-
 • cessors shall have Power to grant any such Feu-rights, where
 • the utmost Extent thereof is not within one short half Mile,

or

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- or at most within 500 Ells of the Harbour of *Frasersburgh*, where it now stands.
- 58 Vol. VI. Tailzie *George Lockhart of Carnwath*, grants Liberty to
Fol. 21. feu Commons or Muirs at 4 s. Scots the Acre, and fifty Acres of infield Ground about the Town of *Carnwath*, at 9 l. the Acre, and 200 Acre of outfield Ground there, at 40 s. Scots the Acre, but none of the legal Conditions and Casualties of Feu-holdings are to be dispensed with, taxed or renounced.
- 52 Vol. 8. Tailzie, *William Murray of Touchadam*, reserves Power
Fol. 182. to the Heirs of Tailzie to enlarge the Village of *St. Ninian*,
p 287 and for that Purpose to grant Feu Charters of his Lands next thereto adjacent, to the Extent of 40 Acres, for Payment of no less Duty than 6 l. Scots per Acre yearly; and also to feu two Acres of Land in *Cumbusbarren* possess by *Hugh Jaffrey*.
- 59 Vol. 9. Tailzie, *Sir John Baird of Newbyth*, Power is given to
fol. 213. feu out such Parts of the said tailzied Lands and Estate, as they shall think fit, provided the Feu-duties payable by these Feu Rights be without Diminution of the Rental. This Tailzie bears Date 4th August 1737.
- 22 Vol. 9. Tailzie, *William Marquis of Lothian*, Power to feu any
fol. 248. Part of the Lands and Estate, except the Mansion House, Gardens and Inclosures of *Newbattle*, providing the Feu-duty to be paid yearly therefor, be not under the present Rent.
- 60 Vol. 11. Tailzie, *James Earl of Finlater and Seafield*, no Tacks
fol. 271. of *Cullen House*, Parks and Inclosures to be granted; Power to feu Stances for Houses and Yards, only each Feu not exceeding a Quarter of an Acre of Ground in or adjacent to the Towns therein mentioned; and always to be granted in Augmentation of the Rental, dated 9th June 1749.
- 61 Vol. 12. Tailzie, *John Earl of Hopeton*, Liberty to feu Stances for
fol. 111. Houses and Yards, each Feu not exceeding a Quarter of an Acre of Ground in or adjacent to the Town of *Bathgate*; and always in Augmentation of the Rental, dated 11th August 1752.
p 288
- 56 Vol. 12. Tailzie by ditto, contains the same Clause with relation
fol. 122. to Feus adjacent to the Town of *Ormiston*.

INSTANCES of Tailzies by which the Mansion House is excepted from the Localities allowed to be granted to Wives.

10 Tailzie, Sir *William Maxwell* of *Monreith*, 'secludes Vol. 3. 62.
 ' the forty five Merk Land of the Barony of *Myretoun* and fol. 101.
 ' *Killentreath*, with the Mansion House, Yards and Parks lying within the Parish of *Mochrum* and Shire of *Wigton*,
 ' from being any ways affected or burdened with the saids Liferent Infeftments, to be granted in Favours of the Ladies or Husbands of the saids Heirs of Tailzie, or Members thereof above expressed.' Dated the 3d March 1703.

Tailzie, Sir *Alexander Seton* of *Pitmedden*, allows the Heirs of Tailzie to provide their lawful Spouses in the proper Liferent of the haill Estate or any Part thereof, with this Provision, That how soon the Heir shall happen to be of 21 or be married, the Person liferenting shall be bound to renounce the Possession of the Manor-place, Gardens and Inclosures with the Mains, and enter the Heir thereto. Dated 18th September 1703. Vol. 3. fol. 133. 63

Tailzie, *Alexander Gordon* of *Achynachy*, appoints the Mansion-house of *Achynachy*, to be a Jointure-house for their Widows, debarring and excluding them from all his other Houses. Vol. V. fol. 27. 64

Tailzie, Sir *James Gordon* of *Park*, the Mansion-house of *Kirkcoun* of *Park* is appointed to be the Jointure-house, debarring and excluding them from all his other Houses. Vol. 5. fol. 51. p289 p2 65

Tailzie, Sir *Richard Newton* of *Newtoun*, gives Power to provide the Wives to Localities not exceeding a Third of the Estate, excluding always the Mannour-place of the said Barony of *Newtoun*, with the Office-houses, Yards, Orchards, Dovecots, and the Inclosures that are next adjacent and contiguous to the said Mannour-place, which are noways to be given off in Liferent to any of the said Wives or Husbands, under the Hazard of incurring the foresaid Irritancy; albeit Vol. 6. fol. 301. 16

albeit the Inclosures may come *in compute*, in order to establish a third Part of the said Lands to be given off in Life-rent.

66 Vol. IX. Tailzie, *Allan Lockhart of Cleghorn*, the Mansion-house, Fol. 119. &c. and Parks about it are excepted from the Subject out of which Localities to Husbands or Wives are to be given.

22 Vol. IX. Tailzie, *William Marquis of Lothian*,—Power to give Fol. 248. Localities, except the Mansion-house of *Newbattle*, Gardens, and Inclosures adjacent thereto.

35 Vol. X. Tailzie, *William Earl of Aberdeen*, Manor Place of *Kellie* or *Haddo* Parks, and Mains thereof, excluded from the Lands given in Locality to Wives.

46 Vol. XI. Tailzie, *Sir Robert Pollock* of that Ilk, the Manor Place Fol. 418. and Inclosures of *Pollock* not to be given in Locality.

